

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

ROSHA C. WILLIAMS,)	
)	
Petitioner,)	
)	Case No. 1:11-cv-92-SJM-SPB
v.)	
)	
COMMONWEALTH, <i>et al.</i> ,)	
)	
Respondents.)	

MEMORANDUM ORDER

This petition for writ of habeas corpus was received by the Clerk of Court on April 19, 2011 and was referred to United States Magistrate Judge Susan Paradise Baxter for report and recommendation in accordance with the Magistrates Act, 28 U.S.C.

§ 636(b)(1), and Rules 72.1.3 and 72.1.4 of the Local Rules for Magistrates.

The Magistrate Judge's Report and Recommendation, filed on December 9, 2011 [34], recommends that the Respondents' motion [19] to dismiss the instant habeas petition (on grounds that the Petitioner's claims are not cognizable under *Stone v. Powell*, 428 U.S. 465 (1976)) be denied but that the petition for writ of habeas corpus be denied without prejudice inasmuch as Petitioner is exhausting his state court remedies. The R&R further recommends that a certificate of appealability be denied.

The parties were allowed fourteen (14) days from the date of service in which to file objections. Service was made on Petitioner by certified mail at SCI Graterford, where he is incarcerated, and on Respondents. Petitioner's objections [36] were filed on December 27, 2011. After de novo review of the petition and documents in the case,

together with the Report and Recommendation and objections thereto, the following order is entered:

AND NOW, this 29th Day of December, 2011;

IT IS ORDERED that the Respondents' motion [19] to dismiss the instant habeas corpus petition (on grounds that the Petitioner's claims are not cognizable under *Stone v. Powell*, 428 U.S. 465 (1976)) shall be, and hereby is, DENIED.

IT IS FURTHER ORDERED that the instant Petition for Writ of Habeas Corpus nevertheless shall be, and hereby is, DENIED without prejudice due to the fact that Petitioner is exhausting his state court remedies.

Inasmuch as jurists of reason would not find it debatable whether the instant petition should be dismissed without prejudice due to the fact that Petitioner is exhausting his state court remedies, IT IS FURTHER ORDERED that no certificate of appealability shall issue.

The Report and Recommendation of Magistrate Judge Baxter dated December 9, 2011 [34] is adopted as the opinion of the Court.

s/ Sean J. McLaughlin

SEAN J. McLAUGHLIN
United States District Judge

Cm: All parties of record.

U.S. Magistrate Judge Susan Paradise Baxter